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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/789,143

02/27/2004

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EXAMINER

PIZIALI, ANDREW T

ART UNIT

PAPER NUMBER

1798

NOTIFICATION DATE

DELIVERY MODE

02/15/2012

ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEFFREY A. TILTON, JERRY M. PARKS,
LARRY E. TARGETT, and GREGORY S. HELWIG

Appeal 2010-009932
Application 10/789,143
Technology Center 1700

Before BRADLEY R. GARRIS, CHARLES F. WARREN, and
JAMES C. HOUSEL, *Administrative Patent Judges*.

GARRIS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134 from the Examiner's decision in the Final Office Action mailed April 21, 2008, rejecting claims 1-27. Subsequent to the Final Office Action, in an Office communication mailed April 5, 2010, the Examiner states that claims 6-10, 16-20, 23, and 24 are withdrawn from appeal and canceled, thereby leaving for our

consideration in this appeal claims 1-5, 11-15, 21, 22, and 25-27.¹ We have jurisdiction under 35 U.S.C. § 6.

We AFFIRM.

Appellants claim a liner/insulator comprising layers of wet processed mats of thermoplastic polymer staple fibers and thermoplastic bicomponent fibers (claims 1, 25, 26) as well as a method of producing such a liner/insulator (claims 13, 27).

Representative claims 1 and 13 read as follows:

1. A liner/insulator comprising:

a) a first layer of wet processed mat;

b) a second layer of wet processed mat directly bonded to said first layer;

wherein said first and second layers comprise thermoplastic polymer staple fibers and thermoplastic bicomponent fibers of different fiber formulations.

13. A method of producing a wet processed liner/insulator comprising the steps of:

a) providing a first layer of wet processed mat;

¹ In their Reply Brief, Appellants argue that "the attempted cancellation of claims 6-10, 16-20, 23, and 24" is improper and that these claims remain pending and on appeal (Reply Br. 1). We will not consider this argument since it relates to an issue which is resolvable by petition not appeal. *See* Manual of Patent Examining Procedure § 1002.02(c) (Rev. 2, May 2004) and § 1201 (Rev. 3, August 2005).

b) providing a second layer of wet processed mat having a different fiber formulation than said first layer;

wherein said first and second layers comprise thermoplastic polymer staple fibers and thermoplastic bicomponent fibers;

c) applying sufficient heat and pressure to said first and second layers of mat to bond said first layer and said second layer directly together and form said liner/insulator.

The references listed below are applied by the Examiner in the rejections before us:

Oleszczuk	5,616,408	Apr. 01, 1997
Lickfield	5,804,512	Sep. 08, 1998
Holm	5,958,186	Sep. 28, 1999
Welchel	6,022,818	Feb. 08, 2000
Cederblad	6,692,606 B1	Feb. 17, 2004
D'Acchioli	6,761,710 B2	Jul. 13, 2004

The following § 102 and § 103 rejections are before us in this appeal.²

Under 35 U.S.C. § 102(b), the Examiner rejects claims 1-5, 11, 12, 25, and 26 as anticipated by Welchel.

Under 35 U.S.C. § 103(a), the Examiner rejects claims 1-5, 11-15, 21, 22, and 25-27 (i.e., all claims on appeal) as unpatentable over Oleszczuk or Lickfield in view of Welchel and alternatively as unpatentable over Welchel in view of Holm or Cederblad or D'Acchioli.

We will sustain each of the above rejections for the reasons expressed in the Final Office Action, the Examiner's Answer, and below.

² The Final Office Action includes a rejection under 35 U.S.C. § 112, 2nd paragraph, of claims 10 and 11. Because this rejection has not been repeated in the Answer, we consider it to have been withdrawn by the Examiner.

The § 102 Rejection

Concerning all rejected claims generally, Appellants argue that the "wet processed" characterization of the independent claim mats distinguishes from the air-laid nonwoven webs (i.e., mats) of Welchel (App. Br. 9-12). As support for this argument, Appellants refer to their Specification which discloses that the wet process is preferred over various dry laid processes because it provides a more consistent weight per unit area, more intimate fiber mixing and more random fiber orientation (*id.* at 10-11; Spec. 7).

Appellants' argument is unpersuasive for two reasons. First, as correctly indicated in the Final Office Action, the argument is not supported by evidence which compares and establishes a distinction between the wet processed mat claimed by Appellants and the air-laid web disclosed by Welchel. The Specification disclosure that "[t]he wet process is preferred over various dry-laid processes" (Spec. 7) is far too general to provide any meaningful comparison with the air-laid process and mat of Welchel. Second, Appellants' argument is not relevant to the Examiner's repeatedly expressed finding that Welchel's water-jet hydroentangling process corresponds to the independent claim "wet processed" recitation (Ans. 5, 12). Significantly, Appellants do not contest this finding in the Appeal Brief or the Reply Brief.

Appellants separately argue the rejection of claim 26 specifically by urging that Welchel "does not disclose the claimed layers with contacting faces" (App. Br. 12). This argument is unpersuasive because Appellants

have not explained with any reasonable specificity why the layers of Welch's composite are considered to not have contacting faces as required by claim 26.

For the reasons stated above and in the Answer, we sustain the § 102 rejection of claims 1-5, 11, 12, 25, and 26 as anticipated by Welch.³

The § 103 Rejections based on Oleszczuk or Lickfield in view of Welch

The Examiner finds that Oleszczuk and Lickfield each discloses nonwoven laminate fabrics of wet-laid (i.e., wet processed) webs (i.e., mats) of thermoplastic staple fibers and thermoplastic bicomponent fibers including fabrics having additional web layers (Ans. 7-8). The Examiner concedes that these references do not specifically teach that the thermoplastic staple and bicomponent fibers of adjacent webs have different fiber formulations (e.g., as required by claim 1) (*id.* at 8). However, the Examiner concludes that it would have been obvious to provide adjacent webs of Oleszczuk and Lickfield with such fibers and to directly bond the adjacent webs in order to obtain a surface "pleasing to the touch and more comfortable to the user" (*id.*) in accordance with the teachings of Welch.

Regarding the rejected claims generally, Appellants argue

³ In the Reply Brief, Appellants present new arguments regarding the § 102 rejection of claims 1 and 25 specifically (Reply Br. 2, 2nd and 3rd paras.) which were not advanced in the Appeal Brief. We will not consider these new arguments because Appellants have failed to provide a showing of good cause explaining why the arguments could not have been presented in the Appeal Brief. *See* 37 C.F.R. § 41.37 and § 41.41, and *Ex parte Borden*, 93 USPQ2d 1473, 1477 (BPAI 2010) (informative).

the fact that Welchel teaches that a different fiber diameter or denier may create a surface more [sic] 'aesthetically more pleasing to the touch' would not in any way provide a reason for a skilled artisan to directly bond two wet processed mats having different fiber formulations together as required by the claim

(App. Br. 13).

This argument lacks convincing merit. A surface more pleasing to the touch and more comfortable to a user would be desirable in the fabrics of Oleszczuk and Lickfield since these fabrics contact the user. Moreover, as the Examiner correctly finds, Oleszczuk and Lickfield expressly teach that the layers of their fabrics can be bonded together by thermal bonding (Ans. 5) which is the bonding technique used by Welchel. These circumstances support a conclusion that an artisan would have provided adjacent web layers of Oleszczuk and Lickfield with different fiber formulations in order to obtain a fabric surface more pleasing to the touch and more comfortable to the user as taught by Welchel.

Appellants' separate arguments regarding method claims 13 and 27 specifically (App. Br. 13-14, 15) are unpersuasive because they fail to assess what the combined teachings of the applied references would have suggested to those with ordinary skill in the art. *See In re Merck & Co., Inc.*, 800 F.2d 1091, 1097-98 (Fed. Cir. 1986). The separate argument regarding claim 26 (App. Br. 14-15) is unpersuasive because (like the claim 26 argument in the § 102 rejection) it fails to explain why Appellants believe the applied references would not have suggested layers with contacting faces.

We sustain the § 103 rejection of all appealed claims as unpatentable over Oleszczuk or Lickfield in view of Welchel for the reasons expressed above and in the Answer.⁴

The § 103 Rejections based on Welchel in view of Holm, Cederblad, or D'Acchioli

The Examiner finds that each of Holm, Cederblad, and D'Acchioli discloses that it is known in the prior art to form mats by either a wet-laid process or an air-laid process and concludes that it would have been obvious to substitute Welchel's air-laid mats with wet-laid mats in view of Holm, Cederblad, or D'Acchioli, thereby providing Welchel with suitable mats known in the prior art (Ans. para. bridging 10-11).

With respect to the rejected claims generally, Appellants argue that there is no reason for making the substitution proposed by the Examiner (App. Br. para. bridging 17-18).

We cannot agree. An artisan would have found it obvious to make this substitution in order to provide the mats of Welchel's composite in a form (i.e., wet-laid mats) known in the prior art. Based on the record before us, the combination of prior art elements resulting from this substitution yields no more than predictable results. This circumstance supports the Examiner's conclusion of obviousness. *See KSR Int'l. Co. v. Teleflex Inc.*,

⁴ In their Reply Brief, Appellants present a new argument against the rejection under review as applied to claim 25 specifically (Reply Br. 3). As more fully explained in note 3, *supra*, we will not consider this new argument because Appellants have failed to provide a showing of good cause explaining why the new argument could not have been presented in the Appeal Brief.

550 U.S. 398, 415-16 (2007) ("The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.").

Appellants additionally argue that "an expressly stated goal of the Holm patent is to produce an article of natural fibers (see col. 1, lines 66-67), so it actually teaches away from the arrangement of Welchel" (App. Br. 17). We perceive no merit in Appellants' belief that the stated goal of Holm teaches away from the Examiner's proposed modification of Welchel. When properly considered in combination, the teachings of Welchel and Holm would have suggested the modification proposed by the Examiner. *See Merck*, at 1097-98.

Regarding claim 25 specifically, Appellants argue that "Welchel does not disclose any third layer of bicomponent fibers" (App. Br. para. bridging 18-19). This argument is unpersuasive because it fails to address with any reasonable specificity the Examiner's prior finding (i.e., made in rejecting claim 25 as anticipated by Welchel) that Welchel discloses the claimed first, second, and third layers at elements 114, 106, and 108 in Figure 2 (Ans. 6).

Appellants' separate arguments regarding claims 26 and 27 are unpersuasive because, as previously explained, they fail to assess what the combined teachings of the applied references would have suggested to those with ordinary skill in the art. *See Merck*, at 1097-90.

Conclusion

The decision of the Examiner is affirmed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. §1.136(a)(1)(iv).

AFFIRMED

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